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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/482,773	01/13/2000	John D. Dreher	2870/220	7449
26646 7590 05/11/2007 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER YU, GINA C	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 05/11/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/482,773

Applicant(s)

DREHER, JOHN D.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

In view of the Board decision rendered on March 22, 2007, PROSECUTION IS HEREBY REOPENED. New rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing this Office action.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-7, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimura (US 5,690,916).**

Kimura discloses a foundation comprising 9.0 % by weight of blue interference pigment and iron oxides, 11.0 % by weight of titanium dioxide, and sericite, other non-interference inorganic pigments which examiner views are used to match skin tone and thus meet the "skin color" limitation. See Example 13; instant claims 1-7, 9, and 11.

The claimed method of covering wrinkles of the skin as recited is inherently practiced by using the prior art composition, since wrinkles and lines are naturally present on the cosmetic users' skin.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hineno (US 6207174 B1) in view of Kimura.**

Hineno teaches a composite powder composition comprising interference or reflective pigments which is effective in covering wrinkle and improving skin color. See Examples 1 and 2; Tables 2 and 3. Example 6 discloses a foundation comprising sericite, iron oxides, and 9.32 % by weight of composite powder. See instant claims 1-7.

While the exemplified formulations contain 5 % of red interference pigments, blue interference pigments are also taught in the specification, col. 13-14, Production Example (4), and in col. 5, Table 1. See instant claim 10.

As discussed above, Kimura teaches a foundation comprising 9 % blue interference pigment and iron oxides, 11.0 % by weight of titanium dioxide, and sericite,

Art Unit: 1617

other non-interference inorganic pigments which examiner views are used to match skin tone and thus meet the "skin color" limitation. See Example 13.

Given the teaching of Hineno that interference pigments used in cosmetics cover wrinkles on the skin, It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exemplified cosmetic formulations of Hineno by using blue interference in a foundation as motivated by Kimura because 1) Hineno also generally teaches blue interference pigments useful for the invention; and 2) Kimura illustrates an example of a foundation comprising blue interference pigments. The skilled artisan would have had a reasonable expectation of successfully enhancing wrinkles on the skin by applying a cosmetic composition comprising blue interference pigments.

**Claim 8 is rejected under 35 U.S.C. § 103(a) as unpatentable over Hineno and Kimura as applied to claims 1-7 and 9-11 above, and further in view of Hurst ("Face Powders", Poucher's Perfumes, Cosmetics and Soaps, 1993).**

Hineno and Kimura, discussed above, fail to teach bismuth oxychloride.

Hurst teaches that bismuth oxychloride is the first synthetic pearlescent pigment and now developed to provide an improved photosensitivity. See p. 117, 2<sup>nd</sup> full par. The reference further suggests that it is possible to formulate compositions using pearlescent pigments to provide "translucent luster, or frosted effect, to enhance the wearer's natural complexion". See p. 117, 5<sup>th</sup> full par.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the method of the combined references by adding

Art Unit: 1617

bismuth oxychloride to the cosmetic composition comprising blue interference pigments, as motivated by Hurst, because of an expectation of successfully producing a composition with luster or frosted effect to enhance the natural look of the user.

### ***Conclusion***

No claims are allowed.

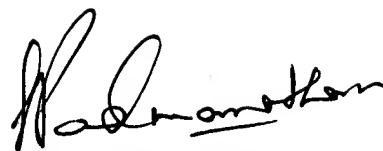
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 1617

Gina C. Yu  
Patent Examiner

A handwritten signature in black ink, appearing to read 'Steffi Padmanabhan', written in a cursive style.

STEFFI PADMANABHAN  
SUPERVISORY PATENT EXAMINER